

Prometheus Radio Project Comments on Media Ownership Proceeding Before the Federal Communications Commission

By Dharma Bilotta-Dailey and Pete Tridish, with help from Alex Dodson, Anthony Mazza, Moira O'Connell and Saadia Toor

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1) Introduction

Qualifications

The qualifications of the Prometheus Radio Project to comment upon this proceeding are somewhat different from most commentators, who are either academics, lawyers for interested parties or politicians. The Prometheus Radio Project is a grassroots organization that fights for a more democratic media by helping community groups at every step of the process as they build their own community radio stations. We fight for the right of all citizens to use our public airwaves to make their own media.

Activists from the Prometheus Radio Project were members of the pirate movement—small bands of broadcasters who risked fines and imprisonment to undermine the unfair rules of access to the airwaves. In acts of public civil disobedience, we challenged the FCC to come up with a more equitable system of broadcast licensing. As the Federal Communications Commission began to listen to the public clamor against corporate radio, Prometheus was a leader in the fight to push regulations making small community broadcast stations legal again—beginning the Low Power FM (LPFM) Radio Service. In the late 1990s a movement emerged, with thousands of individuals who were willing to risk fines or imprisonment to force change in our media ownership system. While the activities of Prometheus have always been strictly within the law, we are representatives of a movement which perceives a crisis in the control of the media. Many of these people have defied these unjust laws in acts of widespread civil disobedience.

2) Public Interest vs. Consumer Interest: Can They Be Equated?

Communication is both a tool of democracy and a constitutionally guaranteed freedom. It is our understanding that that the FCC is mandated not only to regulate the commerce of communication media, but as importantly – perhaps more importantly- the FCC is mandated to protect the public interest in what is our most essential tool for free speech in a democracy.

The FCC has been mandated by Congress on several occasions in 1934 and 1996 to oversee the public airwaves in such a way that serves the public interest . The current Chairman of the FCC, Micheal Powell, has raised numerous questions as to how to define the public interest mandate of the Commission. He has said:

"The best that I can discern is that the public interest standard is a bit like modern art, people see in it what they want to see."

On another more recent occasion, it appeared that he had settled upon a working definition for the purposes of his service to the commission.

"Serving the public interest means crafting the conditions and the environment that will allow innovation to bring new and improved products and services to all Americans at reasonable prices."

**Remarks By MICHAEL K. POWELL Before the Federal Communications Bar Association
Washington, D.C. June 21, 2001**

In the opinion of Prometheus Radio Project, this definition is precisely what the public interest is not.

Making sure that consumers can get cell phones with different color faceplates, with and without collapsible antennas and tiny little video games built in is the sort of thing is generally pretty well provided for by competition in the marketplace. There are economic situations in which markets do a good job of delivering goods and services to consumers, and in these cases the role of the FCC is properly restricted to making sure all of the competitors play by the rules.

The public interest is made up of the things that slip between the cracks of profitable capitalist behavior. If the city of Washington were run purely on the principal of markets, the land that comprises the Washington Mall would be sold to the highest bidder. Surely, there are companies that could make a handsome profit by building office buildings on such a good location, so convenient to centers of government. And why shouldn't they? Such a development could create jobs, reduce commute time for those

who could afford to live or work there, boost the economy--many benefits are readily apparent in this scenario.

The reason we do not allow market driven commercial development on the Washington Mall is because there are many human values we hold dear- many activities that are socially important that do not carry an easily countable dollar value. While the economic value of such things may confound accountants, most Americans understand their social and human value as a matter of common sense.

Upon reviewing the FCC's press release of October 1, 2002 announcing the twelve studies commissioned, we were disappointed to see that all of the studies were divided into only two possible categories- either "consumer-oriented" or "market" studies. Clearly, consumer-oriented and market studies are relevant and appropriate to the regulation of a commodity, but that fulfills only half of the FCC's congressional mandate. Where are the studies that determine the effects of the public-at-large? Can we equate a consumer's needs with the public? Every study, every rule, and every argument must be read against this question: What does this mean for citizens and their ability to speak freely?

A few years ago one of our authors was surprised to see that all of the homeless people in her neighborhood of Chicago had pagers. They were using communications technology regulated by the FCC. Of course, not having telephones or televisions, they would not have been able to participate in the FCC's recent ownership studies based by Nielsen, which only used telephone interviews with people in households that watched at least fifteen minutes of television in an earlier study.

When weighing the evidence, we call upon the Commission to keep in mind that the Congressional mandate determines that the Commission must consider the interests of both the homeless man with a pager who was weeded out of the Nielson study and the soccer mom who was selected for the study and who also happens to be of prime interest to advertiser-based media.

The public has an interest in diversity of media ownership that goes beyond the dollars and cents of the economics of the media market. We see several key facets of the public interest in regulation of media:

- a) Ownership patterns that represent a diverse cross-section of society, including small business and traditionally underserved groups.
- b) The widest possible dissemination of information from diverse and antagonistic sources
- c) Prevention of key economic players from setting the tone of journalism regarding their interests
- d) Prevention of unaccountable entities from amassing economic, social, political and cultural power that will be difficult to balance by countervailing forces in civil society
- e) The effect of the media on public health

a) Ownership patterns that represent a diverse cross-section of society, including small business and traditionally underserved groups.

One of the most important elements of the "American Dream" is the ability of entrepreneurs to start small businesses. It is essential to a balanced mix of media that there be a variety of sizes of media companies, all of which can be successful on their own terms. In order to create the sort of "commons spaces" in which innovation can take place, it is very important that entry-level opportunities exist. It has been argued that policies such as this constitute a form of government protectionism, which interferes with market forces. In fact, it is well recognized that a diversity of business sizes in all industries, mature and emerging is in the interest of the public and well within the sphere of appropriate government action.

For close to 50 years the Small Business Administration has been a government agency devoted to leveling the playing field for small businesses and preserving their place in the economy. While both the FTC and the SBA have a role to play in preserving opportunities for small businesses in media, it should be recognized that the FCC has specific responsibilities in creating public interest regulations that promote small business. Small businesses are more likely to be within the reach of being operated by minorities, women and other groups generally underrepresented in media. Divergent viewpoints and niche programming are also more likely to be carried on outlets owned by smaller entities.

Little attempt is made in the studies conducted by the FCC to make quantitative study of this aspect of the public interest. In study number eleven, **Radio Industry Review, trends in Ownership, Format and Finance**, page 13, the authors point out the possible bias of their results as a result of their choice to limit their analysis to S&P 500 companies: *"Thus, most of the companies included in the analysis are larger station group owners, and there fore may not reflect the performance of smaller owners."* It is unconscionable and ascientific to draw conclusions about the health of an industry based solely upon the performance of the largest entities in that industry. The authors were good to point out this source of potential distortion of their conclusions, but conclusions based on this data must be regarded as lacking in meaning for the state of the industry as a whole. One thing that all parties to this proceeding must concede is that the public interest does not mean the interest of that subset of companies that has "gone public!"

b) The widest possible dissemination of information from diverse and antagonistic sources

Prometheus won't go into this one too deeply since it is well addressed in other comment. We believe it needs no explanation that a true measure of whether media policy promotes the goal of the widest possible dissemination of information from diverse and antagonistic sources is integral to any quantitative analysis of whether that

policy serves the public interest. None of the studies put forward by the Commission address this issue in a substantive manner.

c) Prevention of key economic players from setting the tone of journalism regarding their interests

Far from a hypothetical bogeyman, the misuse of media ownership has persisted throughout American history. Most high school history textbooks document the launch of the Spanish American War, largely the result of the "yellow journalism" practiced by Hearst and Pulitzer. These newspaper owners knew that war headlines would sell more newspapers, and had few scruples about fanning the flames of public sentiment. To this day, the companies started by these men are significant media owners. Will history have even more dramatic stories to tell about the news coverage of war by NBC, whose parent company, General Electric, is one of the largest military contractors?

Surely a measure of the public interest in media is the extent of the separation of journalists and the media corporations that employ them from the economic interests that they are duty-bound to inform the public about.

d) Prevention of unaccountable entities from amassing economic, social, political and cultural power that will be difficult to balance by countervailing forces in civil society.

While regulators, courts, Congress, and other institutions of governance, have separate and limited powers that check and balance each other, corporations have few such limitations. Transnational corporations, now more than ever are capable of moving capital, production, marketing and other operations across national borders and into different jurisdictions.

These economic actors, particularly in the media industry, can amass economic, social, political and cultural power on a scale previously unthinkable. That power can express itself across jurisdictions of various government agencies. By allowing these actors to grow without limit, we risk that they will take the opportunity to abuse their power in ways that are irreversible. In fact, these actors are duty-bound by their corporate structure to maximize profits, externalize liabilities, and (in today's economic climate) maximize short-term gain rather than long-term economic health, regardless of the social cost. The larger these corporations are, the more damage an unscrupulous one is capable of doing before they are caught, and the more likely they are to be get away with it.

While small groups of citizens (amongst whom was one of these authors) are quickly brought to justice for our acts of principled civil disobedience against what we consider to be unjust laws, corporations regularly break laws and defend themselves successfully in the courts. They are penalized minimally, or adapt the law to their wishes through case law and even get Congress to change laws to improve the viability of their specific business models.

A well-documented example of oligopoly gone awry is the systematic dismantling of America's urban mass transportation infrastructure by a consortium of automakers, rubber manufacturers and oil companies. Through shared investment in a front company known as National City Lines, these corporations bought up most of the existing public transportation infrastructure in America's cities, much of which had been built with taxpayer money. National City Lines promptly ran each of these trolley systems out of business, forcing commuters to become dependent on the products of the automakers, rubber producers, and the oil industry. National City Lines and General Motors were eventually found guilty in this conspiracy, but were fined merely \$10,000 after systematically destroying billions of dollars worth of publicly funded transportation infrastructure. The public today lives with the legacy of auto-dependence- the 50,000/year death toll on the highways, over-reliance on foreign oil, spiraling insurance costs, urban sprawl, greenhouse emissions, and air pollution-- because there was no one in government whose job it was to understand and prevent this sort of criminal activity by corporations. Documentation of this case at <http://www.verdant.net/natlcity.htm>, www.trainweb.org/mts/ctc/ctc06.html.

If corporations are capable of such craven acts in distorting the management of our transportation infrastructure, consider how much damage a criminally minded oligopoly could do to our information infrastructure before they could be stopped.

e) The effect of the media on public health

We believe that a key component of evaluating the public's interest in media is through the study of media effects upon public health. The potential public health effects of media ownership structure are many.

Information Rich/Information Poor

If the distributive rationale of media is consumer driven rather than citizen driven, large segments of the population can end up being unserved by media. Advertising funded media skew the production and targeting away from the general interest of all citizens of the democracy, and towards certain "hot demographics." Thus, key information can fail to reach certain segments of the population, and we can end up with an "information rich" class and an "information poor" class.

Substitution of Media Consumption for Social Relationships

Media is often used in today's society to substitute for functions that were previously carried out through local, face-to face social relationships. The average child today spends more time watching TV than they do in school, and often more time than they spend directly interacting with their parents.

Compare how many names of people you know that live within 2000 feet of you with how many names of movie stars and sitcom characters you know?

Baby-sitters, teachers, mentors, and even friends and loved ones are often displaced by the scientifically managed entertainment figures that we relate to through our TV screens. Relating to these figures is enjoyable partly because we can look at them while they can not look back at us. Relationships that we form with these characters spare us the difficulty of judgement and compromise that goes along with social life in a community. However, the following questions must be addressed:

Does media teach the social skills necessary to be a healthy citizen,? Is over-reliance on media for social relationships an epidemiological factor in depression?
Does over-reliance on media for social relationships leave people individuated and powerless, unsupported by traditional webs of social relationships, and incapable of collective social action?

In a study of deaths during Chicago's heat wave of 1995, it was found that social isolation (lack of public spaces, urban fear, disrupted family structures) was a significant risk factor in the hundreds of deaths that occurred. We submit that a component of the public interest in media is the extent to which media creates the public spaces of mind that help to prevent such tragedies.

Media effects on social values

Parents are already concerned about the existing level of commercialism to which children are exposed. The average American is exposed to over a thousand commercial messages per day. According to a national poll conducted by the Center for a New American Dream, a nonprofit organization that promotes responsible consumption, nearly nine in ten parents of children ages two to seventeen feel that advertising and marketing aimed at children makes kids too materialistic. Nearly half of those polled reported their children began asking for brand name products by the age of five.

A media system based solely on advertising revenues can also invite substantive influence over media by the sellers of products that are bad for public health, such as alcohol and cigarettes. And one must wonder whether the media produced to attract our eyeballs to the advertisements is worth the price we personally and collectively pay for the tremendous impact on public health of these products. Perhaps we could do without a media product if it requires the public's exposure to pro-smoking propaganda in order to finance its production.

We are not raising this point in order to call for content regulation, nor the sanitizing of media, nor propaganda campaigns nor more government public service announcements. We are calling for the epidemiological study of public health as it relates to media, and a weighing of the real public costs of our current commercial media system.

3. Best Use and Limitations of Empirical Studies.

It has been pointed out on many occasions by the current Commission that the recent decisions of the courts have forced the Commission to adopt a more rigorous, analytical approach to its' rules on media ownership. In light of Chairman Powell's often stated beliefs on the current relevance of the ownership rules, we have to wonder how much effort was made by counsel for the Commission to defend its regulations in the courts on this matter and preserve the regulatory mandate of the Commission. While an empirical basis for regulations is surely important, it must be understood that the crafting of regulations can not and should not be a purely scientific endeavor. Recent rhetoric about empiricism notwithstanding, decisionmaking about media ownership must be a political process informed by science, with room for deliberation upon more than just scientific data.

We commend Commissioner Powell's determination to strive for an empirical basis to the decision making process of the FCC's proposed rule changes. The many tools of economic and social analysis available to the Commission can help to gain clarity over an unwieldy body of facts. But to determine what needs to be studied, what analysis is most useful, and which facts hold the greatest weight we step outside the bounds of scientific measurement and into the messy world of political decision making.

Often in public life there is perceived to be a competition between democratic and technocratic decisionmaking rationale. Democratic decisionmaking processes involve robust public debate from all sectors of society, the various institutions of governance, and the legal system in order to protect the rights of all parties. Technocratic decisionmaking, on the other hand, involves empirical study, peer review and professional standards.

While there is much appeal to simplifying the governance of society into a scientific discipline (as Karl Marx suggested), and perhaps it might protect us from the perpetual follies caused by the weaknesses of democratic decisionmaking, we fortunately live in a democratic society. This means that the methods of the natural sciences can (and should) inform our decisions, but they cannot be substituted for the democratic process. For example, scientists should be able to assess risks, but should never be allowed to tell the public what an "acceptable risk" is.

The political will of citizens in a democracy is a sufficient basis for the maintenance of the cross-ownership rules. Our citizenry can choose the level of corporate ownership and consolidation of media that is acceptable to us., because corporations are not people that have rights in the sense that citizens of a democracy do. It is up to the citizenry and our elected officials to decide what level of risk associated with media gigantism and oligopoly we are willing to endure.

Chairman Powell has made the accusation that public interest advocates have "turned this critically important policy debate into a political one, substituting personal ideology

and opinion for the facts." We dispute the second clause, but gladly concede the first one. This should not merely be a technical debate, but rather a fully political one. It should not only involve facts and experts, but also opinions. And a cursory glance through the current academic literature shows that a large proportion of recent scholarship in the sociology of the social sciences reveals that much of what passes for social sciences is so ridden with subjective judgement as to be barely distinguishable from ideology dressed up in scientific terms.

The distinction between Science and Scientism is important to make at this juncture. Science is a disprovable body of knowledge that has amassed through the collective application of certain methods of observation and experiment. Observations are made, hypotheses are formed, experiments are conducted that can falsify these hypotheses, and theory is developed as incorrect hypotheses are tossed aside.

Scientism, on the other hand, is the practice of creating an aura of science around subjective opinion. Studies are made in the style of science, but without the substance and rigor of the scientific endeavor. Scientism also carries a second definition, which is the belief that only the methods of the natural sciences can make meaningful claims.

The current enterprise of the Commission in study of media ownership carries scientific taint in both senses. The evidence presented before the Commission frames the questions in such limited terms as to give a false impression of scientific study of the significant policy decisions before us.

The scientific method is not limited to making sure that something was counted and then someone got to do a regression analysis on it. The scientific method demands that intelligent research questions must be framed. Taken together, the evidence thus far presented is wholly inadequate to the task of setting the terms of such an important policy debate.

There is an important role for public opinion in this debate. There is even an important role for emotion. The fetishistic deployment of the rhetoric of scientific rigor is the rigor mortis of a truly deliberative democracy. For the FCC to assert that there is no role for anything but scientific evidence in this debate is anti-democratic and in the worst tradition of scientism.

In general, the scientific method requires the breaking up of complex problems into component sub-problems that allow themselves to be analyzed. It is easiest to conduct rigorous science when these questions lend themselves to quantification, since the methods of quantitative science are arguably more "mature" and researcher bias is easier to detect and avoid. However, a problem for the social sciences is that there are many questions that defy simple quantification, and require qualitative analysis to gain a meaningful understanding of the phenomenon being studied.

There is an understandable temptation to use quantitative methods in social sciences, and leave investigations at that stage, because the complexities of bias free research can

be so great. But the social phenomena are often so complex that the quantitative study that has been possible is often practically meaningless as a guide for social policy.

An example from criticisms of mainstream economic thought is the popularity of the concept of Gross National Product (GNP) as an indicator of healthy economies. It has been pointed out that environmental disasters and their associated clean-up costs, public health crises and their associated medical costs, and wars with their associated sales of weapons all contribute to a greater GNP... but they are in fact tragedies and a country can have a high GNP due to these sorts of occurrences and an economy whose health and sustainability is in deep trouble. By making environmental quality, public health and peace external to the more readily quantifiable measure of the economy through GNP, we risk serious error in basing policy upon study of that economic indicator. We refer to these unquantified factors as externalities.

The problem with the conception of the public interest as

"Serving the public interest means crafting the conditions and the environment that will allow innovation to bring new and improved products and services to all Americans at reasonable prices."

and the general tenor of the studies by the FCC so far is that they treat all of the aforementioned key facets of the public interest as external to their quantitative analyses of the public interest.

All scientific inquiries begin with personal impressions and philosophical ideas. Careful personal observation of the sky by Copernicus and Kepler led to a set of data with anomalies that were inexplicable within the philosophical model of the universe accepted at the time. This led to the "Copernican Revolution." One result of which was that mathematicians wanted to be able to better understand these anomalies and so Newton and Leibnitz invented a kind of math to fit with these observations: calculus. Calculus is a tool used ubiquitously in the sciences. Calculus put a man on the moon, but remember, Newton used the speculations and suggestions of his peers, Hook and Haley, for example, to develop his proof.

The FCC should further consider that it took Newton thirty years to come up with calculus. If the FCC wants a model that truly accounts for the complicated interplay of all relevant factors in relation to media regulation and the public interest that will only happen at the expense of expediency. It is entirely appropriate and necessary for the FCC to do so.

Many rules that exist at the Commission have no empirical basis, but rather reflect the exercise of political compromise and judgement. What is the empirical basis for a mere 20% set aside of FM for non-commercial radio, and 0% of AM. Many other countries (with healthy economies and thriving media sectors) have dramatically different patterns

of ownership. If there is no empirical basis for this rule, should we scrap it, too, and allow all stations to be commercial?

Taking this one step further, it must be pointed out that many key provisions of the Constitution have no empirical basis. The first example of arbitrary caps in the Constitution is in the very beginning of Article I. Members of the House of Representatives must be at least 25 and 7 years a citizen of the U.S.. Why not 30 years old, and 3 years a citizen? A senator has to be 30 years old and has to be 9 years a citizen. The president has to be 35 years old, a natural born citizen, and 14 years a resident of the U.S. Not only is this arbitrary, but also inconsistent. There is no empirical certainty of the propriety of these numbers- they are products of reasoned debate and political compromise. In spite of this lack of an empirical basis, our courts have not chosen to strike down these provisions of the constitution, allowing toddlers to be elected to the Senate.

4) Economics is not the only form of empirical evidence necessary in this proceeding

The Supposed Primacy of Economics

We have noted in our introduction that so far the FCC has primarily sought out economists for study and discussion of media ownership rules. In the FCC's Media Ownership Roundtable discussion, a roomful of economists talked about the need for "rigorous" and "robust" analysis on the one hand while admitting numerous times that such important issues as quality of content and the interplay of the media and civic participation can't be studied thoroughly via economics.

We ask these men to answer us, who gets to define what rigorous means? Economists and those who rely on them will do well to remember that the technological revolution that allows economists to use large samples and big data sets with sophisticated computer programs on supercomputers to do complicated statistical analysis has also hit every other branch of science. Very complex systems are being modeled as you read this by sociologists, psychologists, weather scientists, cosmologists, and evolutionary biologists, to name just a few. When economists talk about a "new behavioral economics" or a "novel" analytic approach they may be reinventing the wheel and it may be a square one. If you follow all the rules of study in one discipline but know nothing of the basics of another then your work is by definition of your discipline rigorous and by definition of the other discipline junk science.

The studies before the commission are heavily weighted toward economic analysis. By seeking out only the opinions and study of economists, the FCC hasn't even attempted to connect the dots down to how mass media effects actual people in such tangible ways as the five we mentioned in section two.

The Commission is lucky to have the caliber of economists that they do looking at the ownership question. Their insights are critical to understanding communications as a commodity. But economic analysis alone cannot tell us all we need to know. Consumers are not the same as citizens, and consumption is not the same as the public interest.

5) Comments and Questions in Response to the Commissioned Studies on Ownership Rules

Study #2, Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign

David Pritchard

This is the only one of the twelve studies released by the FCC that attempts to deal with a serious problem that could result from increased media ownership concentration, namely: To what extent do commonly owned newspapers and television stations in a community speak with a single voice about important political matters?

We believe that this study is a grossly inadequate measure for any insight into this key issue for three reasons: 1) Limited Scope, 2) Faulty Assumptions, and 3) Faulty Methods.

In addition, we believe Dr. Pritchard's study illustrates how the bias toward relying on the expertise of only one discipline, economics, can lead to bad science overall.

Limited Scope.

Pritchard counts seventeen markets where exceptions to the ownership rules currently in effect were made. We believe the FCC missed an opportunity to carefully scrutinize these seventeen test markets in a comprehensive manner. They should have or could be put through a battery of criteria, paired with markets that are effected by existing rules, etc.

Not only are we not seeing what happened in all of these markets, we're only looking at one example. This leads the research to be circumspect on all three counts - limited scope, faulty assumptions and faulty methods. In any branch of science, one example be an anomaly- what if it's the researchers dumb luck to find the exception that proves the rule the first time out and then quits looking? This is a faulty and generally unacceptable method.

Another determination the FCC must discover that is beyond the scope of this study, is how ways- direct or indirect- might a parent company influence the "slant" of it's subsidiary companies. For each possible way, a different assessment tool may be necessary.

Faulty Assumptions.

If Pritchard's one example is to hold together, the following statements would need to be true.

- ☐ ☐ A political decision of importance to parent companies was about to happen.
- ☐ ☐ Parent companies wanted to alter public opinion on this political decision.

We can imagine that a parent company would use more influence on issues that mattered to them more, and let a diversity of opinions on issues that don't. Pritchard makes an arguable assumption that the distinction between Democrats and Republicans is great enough to that parent companies would want to use their influence in this particular example.

The 1996 Telecomm Act which allowed an unprecedented level of consolidation happened under a Democratic administration. The differences between the two parties on many other important political matters such as the environment, military spending, corporate regulation, and foreign policy is actually very small, even negligible to a sizable portion of voters, to say nothing of our non-voting citizen population.

If Pritchard counted Democrats and Republicans as one unit and the full range of political opinion in the United States not reflected by the platforms of the Democrats and Republicans as another, the findings would have been unanimous, with every single example picking either a Democrat or a Republican.

The proliferation of five million dollar book deals for political leaders on "both" sides of the aisle is just one tidbit on the mound of evidence that undermines the assumption that influencing public opinion is the only avenue or favored avenue of political influence available to mass media conglomerates. How does the media's own reporting on such circumspect dealings affect the voting electorate? Is it a coincidence that voter turnout keeps going down as the proliferation of media sources increases?

Faulty Methods.

The following problem of research method should be of particular concern to the FCC, since this study used the same methods as a previous study done by same author. If the FCC commissioned this author because of his previous work, then it shows not only the author ranging outside of his expertise, but also the Commission's neglect.

Sample Selection.

Perhaps through some other vehicle than the paper itself the author clarifies to the Commission why he selected these particular examples. Very little space was used within it to discuss the methodology used in selecting the sample that was chosen. Any undergraduate research methods course teaches that sample selection has the great influence on the outcome of a research project. There is no explanation anywhere in the body of the study as to what criteria provided the basis for choosing the 10 of those 17 that were selected. Buried away in the notes, we find this statement,

"The seven combinations that are analyzed for the first time in this study represent all newspaper-television combinations for which useable tapes or transcripts of local newscasts for the period under study (October 23 through November 6, 2000) could be obtained during the summer of 2002."

For the Commission's purposes, this is inadequate reason to exclude the other combinations. This is a classic case of "looking where the light is."

What were the criteria for "useable" transcripts? The absence of a better explanation and the obscure placement of the existing explanation raise serious questions about the methodological soundness of these findings.

Researcher-Induced Bias.

Dr. Pritchard says that he is looking for a "slant" "conscious or unconscious" in the 2000 election coverage. We would expect such a researcher to have a particular sensitivity to any slant he may himself be introducing into his data collection.

Pritchard states: *"If the research assistants initially disagreed or were uncertain about the slant of any given item, they brought the item to the author for review and discussion. After discussion, all parties agreed in all cases, about the appropriate slant of an item."*

This is known in psychology as researcher-induced bias. The FCC and Dr. Pritchard should know that instructing and consulting with his coding assistants while they are in the process of coding can be a source of bias and should have used the standard psychology research protocols to reduce such bias that have been developed throughout one-hundred plus years of research based psychology.

In **Psychology and Life**, (13th edition) a popular introductory psychology textbook written by Stanford University Professor Phillip Zimbardo illustrates how fundamental the lack of rigor is in Pritchard's study : "Researchers use control procedures to test their hypotheses in a fair, error-free way. Even with standardized procedures, bias can inadvertently be introduced into research. Researcher-caused bias can be controlled in several ways. *Bias based on the expectations of the experimenters can be eliminated by keeping both subjects and experimental assistants unaware of, or blind to, which subjects get which treatment. This is called a double-blind control condition. Potential bias is further reduced by not allowing the researcher into the room during data collection.*"

Coding the "slant" of a given bit of news coverage has a psychological component. Because of that, there is plenty of room for researcher-induced bias in the coding process itself. It is common in psychology studies for researchers to have a whole section of their paper devoted to what tools and protocols they used to correct for such bias.

Many psychological assessment tools have been around for years and are subjects of study in their own right. They have known uses and known limitations. Of course, it would be far preferred for Pritchard to use an assessment tool that has been around for years and with a body of literature.

However, Dr. Pritchard based his coding system on a known assessment tool or created his own is not disclosed in the study.

Study #3 Consumer Substitution Among Media Joel Waldfogel, Consumer Substitution

Current modes of analysis that are meant to enlighten us to cultural distinctions via comparison of blacks, hispanics, whites and Asians are much too broad a brush to capture the subtleties that evaporate within a Designated Market Area. When blacks that trace their ancestry in Americas back to colonial times are lumped with recent African immigrants, those of Lebanese heritage are lumped with those of Polish heritage, and Hmong are lumped with Hawaiians- many cultural distinctions slip out of focus.

Any model of successful media regulation will need to need to incorporate a far more sophisticated understanding of regional, ethnic, and cultural differences. Without some standard of what diversity is, how to find it, and where it lives- *we cannot know* – how it is effected by mass media. Though the task is large, it is essential that FCC gets a handle on this. It would be an awful shame if the vast cultural wealth that exists in this country was lost because no one bothered to inventory it. While economic disciplines may not have nuanced understandings of ethnicity, sociologists and anthropologists certainly do.

“Consumer Substitution Among Media” looks at consumers substituting one type of media for another. It falls short of addressing the fact that your local church newsletter is not equivalent to Playboy. Fox News is not equivalent to the Nation of Islam’s newspaper. All Things Considered is not equivalent to Microsoft Network. To truly understand substitution we would need to understand the qualitative differences inherent across media (ala McLuhan) and qualitative differences between individual content providers. This requires a different set of tools that are beyond the scope of economics. In other words to begin to understand substitution the Commission needs to have an equally brilliant set of sociologists and social-psychologists at it's disposal. The fact that this second mode of analysis is hairier and more difficult to do well does not mean that it is less relevant and can be ignored in a thoroughgoing empirical analysis.

Study #5, Program Diversity and the Program Selection Process on Broadcast Network Television

Mara Einstein

Mara Einstein claims twice in her paper that her research shows that the charge that there is a lack of diversity on TV is simply untrue. She counts twenty-two types of formats on prime-time television. Plenty of diversity, right? When you define diversity as simply a variety of standard television formats such as westerns, comedies, and cop shows it's like defining a well-balanced diet as twenty-two kinds of lettuce.

We believe that the way the term diversity is used by Einstein moves the word outside the bounds of its current usage. Outside of media economist circles, diversity means biological, cultural and ethnic diversity. To use this word to describe 10.1 types of commercial radio formatting or twenty types of TV shows is to confuse the entire discussion. Only by creating such confusion could Dr. Einstein declare her results as proof of diversity.

In the United States there are many distinct geographical regions with particular climate, flora and fauna, with a particular natural history, and particular cultural history. Over this diverse natural tapestry there are people from hundreds of different cultural and ethnic heritages. The 2000 census counts 17.9 percent of our country speaks a language other than English at home- that's nearly 1 in 5 people. And that's not just Spanish, the census records over 41 Creole languages and language families currently in use in the United States. Over 80 percent of Americans reported having an ancestry in one or more of 249 different ethnicities. All of these different groups are here interacting with each other in distinct locales creating thousands and thousands of permutations of local culture.

We fear a cultural Silent Spring. We fear that this incredible wealth of cultural diversity will be flattened by a ceaseless pressure to homogenize into the market-model shorthand for true diversity. Big business demands that market niches fit into neat categories. Buppies and Tweens and Soccer Moms only make sense as tools for aggregating groups *across* markets. But a constant emphasis of analyzing the public as consumers may be destructive to these wonderful hybrids

Study #8 Consumer Survey on Media Usage

Nielsen Media Research

This study suffers the same problem as all the others that rely on research generated to study consumer habit to give meaningful information about citizen media interests. The representative sample is only for a cross section of pre-qualified TV viewers NOT a representative sample of the public at large. Even if you accept that the sample group is relevant the method of phone interview is circumspect. A recent article in the Science section of the New York Times describes how fewer and fewer are answering their phones, how many are replacing their landlines with cell phones, and all around people

are becoming less and less willing to be polled over the telephone. The implications of this on the validity of the telephone poll technique must be accounted for.

Study #9: Radio Market Structure and Music Diversity

George Williams, Keith Brown and Peter Alexander, Media Bureau, FCC

We must confess that we are somewhat mystified about what this study does to help achieve the objective of an empirical basis to media ownership rules. The study has a number of methodological limitations, but most importantly, it misidentifies the fundamental question before the Commission. The question before the Commission is not "how different are the playlists of modern pop radio stations in major markets?" The question is how Consolidation has affected the diversity of the radio landscape for listeners, artists, and business, and the study of top 40 playlists is not a meaningful enough part of this question to study by itself.

As noted by the researchers, the sample only includes data from R&R lists.

pp. 6 *"our sample draws from a possibly non-representative sample within these large markets. R&R only lists stations that meet a minimum rating requirement, meaning that stations that play new songs, so stations that specialize in older songs, like Oldies or Classical stations, are not included in our sample R&R playlists."*

p. 9 *"Our methodology raises some issues concerning our samples. First, R&R playlists draw mainly from the largest markets. Therefore, our sample draws mainly from the top markets and does not include data from smaller markets. However, the markets from which our data draw include over 60% of listeners. First, we assess song diversity across every R&R station-pairs in March 1996 and in March 2001. For each station pair in 1996 and 2001, we calculate the distance function, which measures the number of unique plays between any two stations. For instance, if two radio stations each play 10 songs and none of these songs are the same, then our distance function would be 10; if..."*

In addition to the concerns that the researchers raise, it must be pointed out that proper science is not merely the repurposing of conveniently available data collected for some other purpose. This is certainly convenient, but it is not scientific. This data is collected to enable radio industry owners to understand industry trends, not to study the diversity of the content of the airwaves for citizens.

More interesting questions abound for studying the more fundamental questions before the Commission. Who is deciding what gets played? Are they disc jockeys within the market? Is this a top down model of "diversity" that doesn't include any local input? Who chooses the format? How are songs chosen?

If you have one model where local DJ's coast to coast all decide that a song is fantastic and put it into rotation and therefore the play of that song increased 5% across that nation, that's very different than one where individual in a far off place is crafting a playlist for the entire country from thousands of miles away. The quantitative measure wouldn't show that important qualitative difference. Even when we're talking about exactly the same product, one model increases local diversity, the other undermines it. Also, there is the issue of how many decision makers for what's get played exist in a market.

Study #11, Radio Industry Review, Trends in Ownership, Format and Finance

In study number eleven, **Radio Industry Review, Trends in Ownership, Format and Finance**, page 13, the authors point out the possible bias of their results as a result of their choice to limit their analysis to S&P 500 companies. *"Thus, most of the companies included in the analysis are larger station group owners, and therefore may not reflect the performance of smaller owners."* It is unconscionable and ascientific to draw conclusions about the health of an industry based solely upon the performance of the largest entities in that industry. The authors were good to point out this source of potential distortion of their conclusions, but conclusions based on this data must be regarded as lacking in meaning for the state of the industry as a whole. One thing that all parties to this proceeding must concede is that the public interest does not mean the interest of that subset of companies that has "gone public!"

We believe that the findings with regard to the relatively high debt load of these large radio companies s cause for concern, however. The higher the debt of a company is, the more that industry is in fact the property of the banks. Banks are another sector of our economy that deserve the thoroughgoing scrutiny of journalists, and dramatically intertwined media/banking interests are cause for concern.

6) Further Areas of Inquiry, which the Commission needs to pursue before further action

Below, we outline a number of questions that we think need to be studied rigorously to further chairman Powell's goal of a full, rigorous empirical basis to the rules for media concentration of ownership.

1.Diversity Of Content For The Affluent, And a "Single Ventriloquist" For Content Consumed By the Poor?

We believe that research needs to be done to learn about the difference in how diverse constituencies use and access media. We believe that there are key distortions of markets that are unobserved in the studies informing this proceeding. For example, perhaps there are more sources currently available that cater to (and are affordable by) the affluent. And perhaps there is enough diversity of ownership to protect these media consumers from receiving information from multiple channels that is all owned by a common source. But relatively poor consumers, who may rely more upon the free over-the-air broadcasting

and low cost newspapers, may end up having a media diet which is far more dramatically consolidated in its control. This is not only worth studying in terms of class, but also age, ethnicity, gender and other categories.

2. How Diverse is the Content of the Internet?

To what extent are various demographics using the internet for a source of diverse viewpoints, or merely as another channel for existing media giants. As Commissioner Copps pointed out, Nearly all of the the top twenty news sites on the internet are owned by incumbent media powers.

And according to the National Association of Broadcasters, "the top ten players account for 76% of website revenues." The much vaunted diversity of the internet may not even survive the resolution of the pending open access debate.

3. Media in Times of Crisis?

Some observers have noted a trend in media that in times of crisis, the media rely more upon official sources and are less likely to air voices of dissent. While dissenters may get an opportunity to have their views heard after the crisis has passed, they can be effectively silenced at moments when the public is forming its opinion on a timely issue. Consequently, existing studies of media diversity of voices, or studies such as study #2, **(Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign)** could suggest less effect of ownership influence than might be experienced by the public than during a genuine crisis. Public Crises are the moments when we need our media to do its best work in informing the public, not merely snapping to the lines marked by government officials. A related question worthy of study would be whether a crisis, such as an investigation of legal malfeasance or a labor strike against the parent company affects media coverage provided by outlets owned by that company.

4. Is Chain Radio Serving Advertising for Big Chains More Than Local Business?

To what extent do the interests of big business media coincide with big chain stores—not just ad rates but who is buying ads in big market deals? Are small businesses still able to buy ads, allowing them to compete with the big box stores? What is the ripple effect of media giantism in terms of who is doing business with who?

5. What is the effect of the Media on the Many Aspects Of Public Health?

One avenue of inquiry of a “key factual area” that has not been mentioned anywhere in the FCC's 12 study review: public health. From the public interest standpoint, shouldn't the FCC be reviewing with regularity whether relevant public health information is getting to people who can use it? Shouldn't any changes in either marketplace or regulation arenas be understood in relation to this important public interest? Should not we look at key questions of various media ownership outcomes and their potential impact on public health?

Epidemiology meets or exceeds the standards of economics as a mode of scientific inquiry. A more rigorous basis of a public interest standard could hardly be found.

Therefore the Commission should consider it as another possible source of analysis relative to the junction of public interest and communications tools.

A number of the 12 studies looking at Chicago as one of the markets being studied. Consider the work of Eric Klinenberg as outlined in his 2002 book, *Heat Wave*. Klinenberg examines heat related deaths in Chicago in the summer of 1995. His study shows a strong relationship between the disparity of the public infrastructure from one neighborhood to the next and the death rate in those neighborhoods during the heat crisis. Is media part of the public infrastructure that needs to be evaluated for its ability to serve all citizens with key life and death information, including the poor, the elderly, youth and other demographics that are not desirable to advertisers?

6. Size and Resources Devoted to Newsrooms

A study of the size of newsrooms and resources devoted to public affairs coverage would also be a useful gauge for any study of how the public's interest is being served or not served by the current media order and any changes that may be made in the pending rulemaking.

7. The Need for Experiments in New Media Policy.

In general we urge the Commission not to proceed hastily and roll out an entirely new media landscape without quantitative study of the effects of change in small test areas. A scientific tool appropriate for use by the FCC is the trial. The FCC should make it a regular practice where ever possible to roll out new policies in test areas that can be closely examined before unleashing an unknown onto the whole system. A rigorous new empirical basis to the Commission's rules requires original data collection in limited experimental conditions, such as the rollout of new policies in a small number of test markets.